

Message Text

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TO AMEMBASSY MADRID

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COMNAVACTS NAVSTA ROTA LAW CENTER

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E.O. 11652:GDS 1980

TAGS: MILI, SP

SUBJ: OFFICIAL DUTY IN HOME TO WORK CASES

REFS: (A) MADRID 7486

(B) STATE 231716 (NOV. 26, 1973)

1. FOR REASONS CONTAINED REF B, WE CANNOT CONCUR YOUR PREFERENCE FOR WAIVER OF PRIMARY RIGHT TO EXERCISE JURISDICTION. HOWEVER, IN VIEW OF EMBASSY JUDGMENT THAT GOS POSITION ON "SERIOUS" CASES IS UNALTERABLE, EMBASSY AUTHORIZED ENTER INTO INFORMAL ARRANGEMENT WITH GOS UNDER WHICH US HENCEFORTH WOULD NOT ISSUE DUTY CERTIFICATE IN CASES INVOLVING TRAVEL TO AND FROM WORK IN POV, WITH UNDERSTANDING THAT GOS WILL WAIVE JURISDICTION EXCEPT IN SUCH CASES WHICH ALSO INVOLVE DEATH OF SPANISH NATIONAL. PREFERRED FORUM FOR INFORMAL AGREEMENT, TO CONFIDENTIAL

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BE CONSUMMATED BY ORAL EXCHANGE, WOULD BE JOINT COMMITTEE.

2- IF ABOVE ARRANGEMENT ACCEPTABLE TO GOS, FREE CASE MAY BE RESOLVED BY AD HOC US WITHDRAWAL OF DUTY CERTIFICATE PRIOR TO IMPLEMENTATION OF NEW AGREEMENT.

3. IN DISCUSSING HANDLING OF THESE CASES WITH SPANISH AUTHORITIES, EMBASSY SHOULD AVOID ANY INFERENCE THAT USG WILL WAIVE ITS PRIMARY RIGHT TO EXERCISE JURISDICTION OR OTHERWISE ACQUIESCE IN EXERCISE OF JURISDICTION BY SPAIN IN ALL OFFICIAL DUTY CASES WHICH GOS MAY REGARD AS "SERIOUS" BECAUSE OF DEATH OF SPANISH NATIONAL OR SOME OTHER FACTOR. OUR WILLINGNESS TO ACCEDE TO SPANISH DESIRE TO EXERCISE JURISDICTION IN HOME-TO-WORK CASES INVOLVING DEATH OF SPANISH NATIONAL IS BASED ON OUR DECISION NOT TO TREAT SUCH CASES AS OFFICIAL DUTY, AND DOES NOT CONSTITUTE A PRECEDENT FOR OTHER "SERIOUS" CASES WHERE OFFICIAL DUTY CLEARLY INVOLVED (E.G., SENTRY SHOOTING CASE OR TRAFFIC DEATH INVOLVING DUTY DISPATCHED GOVERNMENT VEHICLE). RUSH

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